Supreme Court, U.S.
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No. 87-267

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

D. H. HOLMES CO., LTD.,
Appellant,

v.

SHIRLEY MCNAMARA,
SECRETARY OF REVENUE AND TAXATION,
THE DEPARTMENT OF REVENUE AND TAXATION,
STATE OF LOUISIANA,
Appellee.

On Appeal from the Court of Appeal, Fourth Circuit, State of Louisiana

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BRIEF OF THE NATIONAL GOVERNORS' ASSOCIATION, NATIONAL ASSOCIATION OF COUNTIES, COUNCIL OF STATE GOVERNMENTS, INTERNATIONAL CITY MANAGEMENT ASSOCIATION, NATIONAL CONFERENCE OF STATE LEGISLATURES, NATIONAL LEAGUE OF CITIES, AND U.S. CONFERENCE OF MAYORS AS *AMICI CURIAE* IN SUPPORT OF APPELLEE

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QUESTION PRESENTED

Whether the Commerce Clause protects a retailer doing business within a State from a use tax on the distribution of catalogs mailed to its customers within the State when the catalogs are produced outside the State.

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INTEREST OF THE *AMICI CURIAE*

The *amici* are organizations whose members include state, county, and municipal governments and officials throughout the United States. *Amici* have a compelling

interest in legal issues that affect state and local governments. In this case, a Louisiana retailer would avoid a routine state use tax by having its promotional catalogs designed and printed outside the State for delivery directly to its customers in Louisiana. The retailer concedes that it would owe Louisiana tax if the catalogs were printed in the State. J.A. 97. Thus, a Louisiana corporation asserts that its use of out-of-state suppliers insulates it from a tax that is a normal incident of the conduct of its business within Louisiana.

Amici are concerned about this case because it involves an egregious use of the Commerce Clause as a sword rather than a shield. The dormant Commerce Clause prohibits discrimination against interstate commerce, but it does not require the States to discriminate in favor of interstate commerce. Here, a local business' use of the Commerce Clause to avoid a state tax would give that business a competitive advantage over other taxpayers.

Use of the dormant Commerce Clause as a sword to cut from the States their powers to collect uniform, nondiscriminatory taxes is incompatible with our federal system of government. The States' power to raise revenue by imposing taxes is a fundamental aspect of their sovereignty. State taxing authority is subject to constitutional limitations, but this Court's decisions have repeatedly recognized that States can require businesses engaged in interstate commerce to pay their fair share of the costs of government. Without that power, the States would be effectively deprived of independent existence and ability to govern.

Amici submit that the Louisiana Court of Appeal correctly applied this Court's precedents concerning the legitimate scope of state taxation under the dormant Commerce Clause. Because the Court's decision in this case will directly affect matters of prime importance to

amici and their members, *amici* submit this brief to assist the Court in its consideration of the case.[1]

STATEMENT OF THE CASE

Appellant D. H. Holmes Company, Ltd. ("Holmes") is a Louisiana corporation with its principal place of business in New Orleans, Louisiana. Holmes operates thirteen department stores in Louisiana, as well as stores in Mississippi and Alabama. Holmes has approximately 5,000 employees and 1,500,000 to 2,000,000 customers within Louisiana. J.S. App. 9A.

In 1979, 1980, and 1981, Holmes contracted with New York companies for catalogs to promote Holmes' merchandise. The contractors designed and prepared the catalogs under Holmes' direction. They were not mail-order catalogs, but promotional pieces intended to bring customers to Holmes' retail stores. The catalogs were printed in Boston, Oklahoma City, and Atlanta and mailed directly to residents of Louisiana, Mississippi, and Alabama selected by Holmes. The catalogs carried instructions for postal carriers to leave them with the current resident if the addressee had moved and to return nondeliverable catalogs to one of Holmes' New Orleans stores. Approximately 82 percent of the catalogs were distributed to Louisiana residents. Holmes paid no taxes on the catalogs in the States where they were prepared and printed. J.S. App. 3A-4A.

Louisiana imposes a compensatory use tax of 3 percent on "the use, the consumption, the distribution, and the storage for use or consumption in this state" of "each item or article of tangible personal property" not subjected to a sales tax at that rate in Louisiana or elsewhere when acquired. La. Rev. Stat. §§ 47:302(A)(2),

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[1] Pursuant to Rule 36 of the Rules of this Court, the parties have consented to the filing of this brief. Their letters have been filed with the Clerk of the Court.

47:321(A)(2). Upon audit of Holmes' sales and use tax returns for 1979-1981, the Louisiana Department of Revenue and Taxation assessed Holmes for delinquent use taxes on the cost price of the catalogs that it had distributed to Louisiana residents. Holmes challenged the tax on the ground that it violated the Commerce Clause of the United States Constitution. J.S. App. 2A-13A.

The Louisiana courts sustained the State's tax. The trial court found that the distribution of the catalogs within Louisiana was "intended for the use of D. H. Holmes in increasing its sales to potential customers who are residents of Louisiana" and that the distribution was a taxable "use" of the catalogs. The trial court concluded that application of the use tax to Holmes' activity did not unconstitutionally burden interstate commerce because the tax satisfied the four-factor test stated in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977). J.S. App. 21A-22A. The Louisiana Court of Appeal, Fourth Circuit, affirmed the trial court's ruling. *McNamara v. D. H. Holmes Co.*, 505 So.2d 102, 105-106 (1987) (J.S. App. 2A-10A). It agreed that "[d]istribution of the catalogs certainly constitutes 'use' by Holmes under the statute and is subject to the tax." J.S. App. 7A. It also agreed that Holmes' Commerce Clause challenge should fail because the tax passed the test stated in *Complete Auto*. The Supreme Court of Louisiana denied Holmes' petition for review. 506 So.2d 1224 (1987) (J.S. App. 11A).

SUMMARY OF ARGUMENT

Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977), established that a state tax on interstate commerce is constitutional if it (i) is applied to activity having a substantial nexus with the State, (ii) does not discriminate against interstate commerce, (iii) is fairly apportioned, and (iv) is fairly related to benefits that the State provides. *Id.* at 287; *Department of Revenue*

v. Association of Washington Stevedoring Cos., 435 U.S. 734, 750 (1978). The Court consistently has used this test to determine whether a state tax impermissibly burdens interstate commerce. The *Complete Auto* test is the appropriate standard for determining whether the Louisiana use tax on the distribution of catalogs violates the Commerce Clause.

The stated object of Louisiana's use tax is "the use, the consumption, [or] the distribution" of tangible personal property in Louisiana. La. Rev. Stat. § 47:302(A). The Louisiana courts found that appellant's distribution of catalogs to Louisiana residents constituted a "use" under the statute. The use tax is a tax on the privilege of use; it is not a direct tax on goods. *See McLeod v. J. E. Dilworth Co.*, 322 U.S. 327, 330 (1944). Thus, like the tax at issue in *Complete Auto*, the tax at issue here has been imposed on the in-state portion of an activity in interstate commerce.

The *Complete Auto* test would govern even if the tax fell directly on goods in transit. This Court's antique jurisprudence prohibiting direct taxes on goods in interstate commerce is premised on the prohibition of all direct taxes on interstate commerce. That premise was repudiated in *Complete Auto*, 430 U.S. at 288. Where a state tax satisfies each element of the *Complete Auto* test with respect to property in transit, the State has a sufficient constitutional basis for taxing the property. *See Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 445 (1979).

Louisiana has satisfied the nexus requirement of the *Complete Auto* test because the activity that it taxed took place within the State and bore a substantial relationship to Holmes' business within the State. Holmes caused the distribution of the catalogs within Louisiana by ordering the catalogs and directing their delivery to Louisiana customers through the United States mail.

The catalogs were an integral p[illegible]of Holmes' in-state business because they were intended to promote in-state sales. Thus, the distribution activity has a direct nexus with Louisiana.

Louisiana also has satisfied the other three parts of the *Complete Auto* test. The Louisiana use tax compensates the State for the use within the State of property purchased outside the State free from Louisiana sales tax. Like the compensatory use taxes in other States, the Louisiana tax does not discriminate against interstate commerce because the burden placed on goods purchased out-of-state is identical to that placed on equivalent purchases within the State. *See Henneford v. Silas Mason Co.*, 300 U.S. 577 (1937). The tax is fairly apportioned because it falls only on in-state activity and because it provides a credit for sales taxes paid to other States. The tax is fairly related to the services provided by the State because Holmes' extensive in-state business enjoys the full benefit of Louisiana's governmental services. Since Louisiana's tax satisfies the four-factor *Complete Auto* test, it does not impose an undue burden on interstate commerce.

Appellant should not be allowed to use the Commerce Clause as a sword to defeat a tax on a normal incident of its in-state business. Although no State may discriminate against interstate commerce, "the Commerce Clause does not require that interstate commerce be placed in a privileged position." *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 649 (1981) (Blackmun, J., concurring). A compensatory use tax is designed to promote equality between in-state and out-of-state purchases. The use tax prevents the drain on state revenues that would occur if local businesses could escape the tax on local sales by placing orders outside the State. The tax also prevents the discrimination against in-state sellers that would result from such practices. *See National Geographic Society v. California Board of Equalization*, 430

U.S. 551, 555 (1977). If the Court upheld Holmes' position, taxpayers would be encouraged to channel their purchases through interstate commerce in order to avoid taxes. Such a result would deprive the States of their power to require that businesses pay their fair share of the costs of government.

ARGUMENT

I. *COMPLETE AUTO* PROVIDES THE PROPER TEST FOR DETERMINING WHETHER LOUISIANA'S APPLICATION OF ITS USE TAX VIOLATES THE COMMERCE CLAUSE

Appellant's challenge to the imposition of Louisiana's use tax on its in-state distribution of its promotional catalogs has an archaic flavor. Appellant concedes that it would have been subject to the State's sales tax if it had purchased the catalogs in Louisiana (J.A. 97), but it insists that the State's compensating use tax is not due when it purchases the catalogs outside the State for direct delivery to the intended recipients. Appellant seeks to disassociate itself from the in-state use of the catalogs because it does not take direct possession of them and because they come into the State through the United States mail. This argument is reminiscent of the formalism that governed constitutional challenges to state taxes before it was repudiated by this Court in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977).

Complete Auto upheld a State's tax on the distribution of goods in interstate commerce. 430 U.S. at 276-277. The case involved a sales tax on the shipment of new cars from railroad yards to the dealerships that had ordered them. Rejecting the antique notion that a state tax on interstate commerce necessarily violates the Commerce Clause, *Complete Auto* held that state taxes affecting commerce are constitutional as long as they (i) are applied to activity having a substantial nexus with the State, (ii) do not discriminate against interstate com-

merce, (iii) are fairly apportioned, and (iv) are fairly related to the benefits that the State provides. *Id.* at 287.

A long line of cases decided since *Complete Auto* has recognized that the four factors identified in *Complete Auto* constitute the proper test for determining whether a state tax on in-state commercial activities violates the Commerce Clause's prohibition on the States' interference with the free flow of interstate trade. *See, e.g., American Trucking Ass'ns v. Scheiner*, 107 S.Ct. 2829 (1987); *Wardair Canada, Inc. v. Florida Dep't of Revenue*, 477 U.S. 1 (1986); *Container Corp. of America v. Franchise Tax Board*, 463 U.S. 159 (1983); *Commonwealth Edison Co. v. Montana*, 453 U.S. 609 (1981); *Exxon Corp. v. Wisconsin Dep't of Revenue*, 447 U.S. 207 (1980); *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434 (1979); *Department of Revenue v. Association of Washington Stevedoring Cos.*, 435 U.S. 734 (1978). In that line are cases involving various state taxes on the in-state portion of interstate commerce, such as a business tax on the in-state handling of goods in transit (*Washington Stevedoring*), a property tax on cargo containers moving in foreign commerce (*Japan Line*), and a highway tax on intrastate travel over interstate arteries (*American Trucking*). Both *Complete Auto* and its progeny therefore have established *Complete Auto*'s test as the proper measure of a State's power to levy taxes affecting interstate commerce.

Like *Complete Auto*, this case involves a state tax on the in-state distribution of goods in interstate commerce. The stated object of the Louisiana use tax is "the use, the consumption, [or] the distribution" of tangible personal property in Louisiana. La. Rev. Stat. § 47:302(A). The State has applied that tax to appellant's distribution of catalogs through the mail to Louisiana residents who were customers or potential customers of its Louisiana retail stores. J.S. App. 3A-7A. Thus, Louisiana has taxed the in-state portion of an activity strikingly similar to the activity in *Complete Auto*.

Holmes contends that *Complete Auto* should not apply to this case because Louisiana's use tax is a direct tax on the catalogs while they still were moving in interstate commerce. Holmes is mistaken on two counts.

First, Louisiana has not taxed Holmes' catalogs. Use taxes are not direct taxes on goods, even though the amount of a use tax depends upon the value of the goods that the taxpayer has used. Use taxes are simply taxes on the privilege of using goods without paying sales tax on them. Like all use taxes, Louisiana's tax falls on an activity: the use of property that Holmes acquired without paying a sales tax to any State. La. Rev. Stat. § 47:302(A)(2); *see McLeod v. J. E. Dilworth Co.*, 322 U.S. 327, 330 (1944). In this case, Louisiana has found that Holmes made use of the catalogs when it distributed them to Louisiana residents in order to promote its Louisiana business. J.S. App. 3A-7A. Even if the catalogs still were moving in interstate commerce when that use occurred, as Holmes argues, Louisiana's tax remains a tax on the distribution of the catalogs rather than a tax on the catalogs themselves. Thus, the Commerce Clause standard used in *Complete Auto* and its progeny to evaluate state taxes on activities in interstate commerce is the proper standard for evaluating a use tax on the distribution of goods that have moved through interstate commerce.

Second, the *Complete Auto* test would govern this case even if Louisiana had taxed Holmes' catalogs while they were in transit. The notion that the Commerce Clause flatly prohibits all direct taxes on goods in commerce is a relic of categorical thinking long ago rejected. Antique authority flatly prohibiting direct state taxation of goods in transit rested on the premise that any state taxes on interstate commerce violate the Commerce Clause. *See Minnesota v. Blasius*, 290 U.S. 1, 9 (1933); *Coe v. Town of Errol*, 116 U.S. 517, 523 (1886). That premise was repudiated resoundingly in *Complete Auto*. 430 U.S. at

279; *see Colonial Pipeline Co. v. Traigle*, 421 U.S. 100, 115-116 (1975) (Blackmun, J., concurring). Since then, this Court necessarily has questioned the vitality of the flat prohibition found in the old cases. *See Washington Stevedoring*, 435 U.S. at 745-746 (authority prohibiting taxes on stevedoring reexamined in light of *Complete Auto*); *see also American Trucking Ass'ns*, 107 S. Ct. at 2848 (authority upholding facially neutral flat taxes reexamined in light of *Complete Auto*). The constitutionality of state taxes on goods in transit should be examined in light of the test articulated in *Complete Auto*. *See Japan Line*, 441 U.S. at 445 (containers moving in commerce subject to direct state taxes under standards embodying the *Complete Auto* test); P. Hartman, Federal Limitations on State and Local Taxation § 2.18 (1981); 1 J. Hellerstein, State Taxation: Corporate Income and Franchise Taxes § 4.11 (1983).

II. LOUISIANA'S APPLICATION OF ITS USE TAX SATISFIES THE FOUR PARTS OF THE *COMPLETE AUTO* TEST

A. Appellant's Distribution Of Its Catalogs Has A Substantial Nexus With Louisiana

Louisiana has satisfied the nexus requirement of the *Complete Auto* test because the activity that it taxed took place within Louisiana and bore a substantial relationship to Holmes' business within the State. Louisiana has taxed the distribution to Louisiana residents of catalogs inviting them to shop at Holmes' Louisiana retail stores.

Holmes' catalog distribution took place within Louisiana. The delivery of the catalogs to customers and potential customers residing in Louisiana was the purpose and final step of the activity. Holmes caused the distribution by ordering the catalogs and directing their delivery through the mail. Holmes used the catalogs within Louisiana to promote its business in the State by directing their delivery to specified customers within the State, by directing alternative delivery to current residents at addresses within the State, and by directing all non-deliverable catalogs to one of Holmes' New Orleans stores. J.S. App. 4A. Thus, Holmes enjoyed the benefit of using the catalogs for their intended purpose when they came to rest in the hands of persons throughout Louisiana.

Not only did Holmes' catalog distribution take place within Louisiana, it also directly related to Holmes' Louisiana business. Holmes' catalogs were not mail-order catalogs soliciting interstate business, but promotional catalogs inviting customers to buy at Holmes' Louisiana retail stores. Thus, the catalog distribution that Louisiana has taxed was an integral part of what Holmes concedes to be its substantial business inside Louisiana. Louisiana has a strong nexus with Holmes' distribution of its catalogs because Holmes made use of the catalogs in the course of conducting its active business within the State.

Holmes' substantial business presence within Louisiana distinguishes this case from *National Bellas Hess, Inc. v. Department of Revenue*, 386 U.S. 753 (1967). *Bellas Hess* held that the Commerce Clause prohibits a State from imposing the duty to collect use taxes on mail-order sellers whose only contacts with the State are communications by mail or common carrier. *Id.* at 758. *Bellas Hess* has no application to a case where the mail-order seller keeps "retail outlets, solicitors, or property" within the taxing state. *National Geographic Society v. California Board of Equalization*, 430 U.S. 551, 559 (1977). *Bellas Hess* therefore is not relevant to a case like this one, where the taxpayer is an in-state retailer and the activity subject to tax is an integral part of the taxpayer's in-state business. *Id.* at 561.

Holmes incorrectly imagines that a decision for Louisiana in this case would allow a State to levy use taxes on all catalogs and promotional materials mailed to its residents. Holmes sees that spectre because it completely fails to acknowledge both Louisiana's nexus with the catalog distribution and the ample protection against burden-

some state taxation afforded by a proper application of the *Complete Auto* test. A decision for the State in this case simply would recognize that a retailer doing substantial business within a State cannot withdraw certain otherwise taxable aspects of that business from the State's taxing jurisdiction by covering them with the cocoon of interstate commerce. *See Complete Auto, supra; Washington Stevedoring, supra.* Out-of-state merchants with minimal connections to a State would continue to find shelter from invalid state exactions through the nexus, apportionment, fair relationship, and antidiscrimination requirements of the *Complete Auto* test.

B. Louisiana's Compensatory Use Tax Does Not Discriminate Against Interstate Commerce

The Louisiana use tax compensates the State for the use within the State of property purchased outside the State free from Louisiana sales tax. See La. Rev. Stat. §§ 47:302(A); 47:305(E). Like compensatory use taxes in other States, the Louisiana tax is designed to promote equality between in-state and out-of-state purchases. The tax protects state sales tax revenues and prevents discrimination against in-state sellers by ensuring that property bought at retail outside the State bears the same tax as property bought at retail inside the State. *See National Geographic*, 430 U.S. at 555; *Henneford v. Silas Mason Co.*, 300 U.S. 577, 581-84 (1937).

The Louisiana use tax does not discriminate against property purchased out-of-state for distribution and use within the State. The tax applies only to the use of goods acquired free of sales tax at the rate that would have applied had the goods been acquired in Louisiana. La. Rev. Stat. § 47:303(A) (credit for sales tax paid). Out-of-state goods bear no greater burden than in-state goods. One is taxed in connection with "one activity or incident, and the other upon another, but the sum is the same when the reckoning is closed." *Silas Mason*, 300 U.S. at 584. Thus, like the compensatory use taxes that this Court

repeatedly has approved, the Louisiana tax does not discriminate against interstate commerce. *See National Geographic, supra; see also Tyler Pipe Industries, Inc. v. Washington Dep't of Revenue*, 107 S.Ct. 2810, 2818-2820 (1987) (general discussion of compensatory taxes).[2]

C. Louisiana's Use Tax Is Fairly Apportioned

The compensatory nature of the Louisiana use tax assures that the tax is fairly apportioned. The Louisiana use tax statutes give credit against the tax for any sales or use taxes paid to another State. La. Rev. Stat. § 47:303(A). The statutes also limit the tax to the use of goods that have come to rest within the State. La. Rev. Stat. § 47:305(E). Use of goods that have come to rest is a wholly intrastate activity, and a tax on it therefore does not require apportionment. *See Tyler Pipe*, 107 S.Ct. at 2822 (wholesaling is a local activity); *Commonwealth Edison*, 453 U.S. at 617 (severance tax is a tax on local activity that does not require apportionment).

D. Louisiana's Use Tax Is Fairly Related To The Services That The State Affords Appellant

The catalog distribution subjected to tax is an integral part of Holmes' Louisiana retail business. That

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[2] Imposition of the use tax on a "cost price" including design services that would not be subject to sales tax if separately purchased in Louisiana does not discriminate against out-of-state purchases. *Cf. Halliburton Oil Well Cementing Co.* v. *Reily*, 373 U.S. 64 (1963) (use tax invalid where imposed on overhead costs of self-constructed property produced outside the State). Louisiana has not attempted to tax design work brought into the State in circumstances where the in-state purchase of design services would not have been taxable. Here, Holmes has purchased finished catalogs and brought them into the State. Louisiana properly imposed its use tax on the cost of the catalogs because the in-state purchase of finished catalogs would have been taxable. See W. Hellerstein, *Commerce Clause Restraints on State Taxation: Purposeful Economic Protectionism and Beyond*, 85 Mich. L. Rev. 758, 767 (1987).

business enjoys the full benefit of Louisiana's governmental services and public infrastructure. By imposing a use tax, Louisiana simply asks that business to pay one of the normal taxes routinely assessed against local businesses throughout the United States. *See National Geographic*, 430 U.S. at 555. The tax therefore bears a fair relationship to Holmes' presence and activities within the State. *Commonwealth Edison*, 453 U.S. at 629.

III. APPELLANT CANNOT USE THE COMMERCE CLAUSE AS A SWORD TO DEFEAT A ROUTINE TAX ON A NORMAL INCIDENT OF ITS IN-STATE BUSINESS

"The Commerce Clause does not state a prohibition; it merely grants specific power to Congress." *Washington Stevedoring*, 435 U.S. at 749. Over the years, however, the Commerce Clause has been understood to afford a shield that protects interstate commerce from undue state interference. The fundamental principle of jurisprudence under the dormant Commerce Clause is that no State may discriminate against interstate commerce. *Boston Stock Exchange v. State Tax Comm'n*, 429 U.S. 318, 331 (1977). On the other hand, "the Commerce Clause does not require that interstate commerce be placed in a privileged position." *Commonwealth Edison*, 453 U.S. at 649 (Blackmun, J., concurring). Activities in interstate commerce must bear a fair share of the fiscal and other burdens associated with the support of state and local governments. *Id.* at 625-626; *see Complete Auto*, 430 U.S. at 288; *Western Live Stock v. Bureau of Revenue*, 303 U.S. 250, 254 (1938). The Commerce Clause is not a sword with which businesses can exact concessions from the States.

In this case, Holmes would wield the Commerce Clause as a sword to withhold from Louisiana a routine tax on a normal incident of Holmes' in-state business. A compensatory use tax is designed to promote equality between in-state and out-of-state purchases. The use tax prevents the drain on state revenues that would occur if buyers could escape the tax on local sales by placing orders outside the State. The tax also "put[s] local retailers subject to the sales tax on a competitive parity with out-of-state retailers exempt from sales tax." *National Geographic*, 430 U.S. at 555. Rather than pay the routine tax on its use of property purchased out-of-state, however, Holmes claims that contact with interstate commerce immunizes the distribution of its catalogs from the otherwise applicable tax. If Holmes should prevail, Louisiana would be denied the normal revenues related to Holmes' in-state activities. Louisiana printers would be placed at a competitive disadvantage to printers in other States, and other Louisiana retailers who use in-state printers would be disadvantaged in comparison to Holmes. By using the Commerce Clause as a sword, Holmes would have advantaged interstate commerce at the expense of local business.

In return for accepting the benefits of doing an extensive business within Louisiana, Holmes must submit to the State's application of its tax statutes as long as the State keeps within constitutional bounds. *Norton Co. v. Department of Revenue*, 340 U.S. 534, 538 (1951). Louisiana has found that Holmes' distribution to Louisiana residents of promotional catalogs printed in and mailed from another State is a taxable use of property within the State. Holmes' contention that it cannot be taxed because it did not own the catalogs when they came to rest within the State merely quarrels with Louisiana's interpretation of its own statute. Louisiana's tax satisfies the constitutional requirements of the Commerce Clause as set forth in *Complete Auto*. Holmes cannot avoid the tax by arguing that the catalog distribution is immune simply because the catalogs moved across state lines. Louisiana has not burdened Holmes'

use of interstate commerce; the Commerce Clause demands no more.

CONCLUSION

The judgment of the Louisiana Court of Appeal, Fourth Circuit, should be affirmed.

Respectfully submitted,

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